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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/664,273	09/16/2003	George D. Hermann	06-516 US	3435
34704	7590	66/23/2010	EXAMINER	
BACHMAN & LAPOINTE, P.C. 900 CHAPEL STREET SUITE 1201 NEW HAVEN, CT 06510			RYCKMAN, MELISSA K	
ART UNIT	PAPER NUMBER	3773		
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06/23/2010		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/664,273	HERMANN ET AL.
	Examiner MELISSA RYCKMAN	Art Unit 3773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

1) Responsive to communication(s) filed on 21 May 2010.  
 2a) This action is FINAL.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

4) Claim(s) 1-49 and 51-53 is/are pending in the application.  
 4a) Of the above claim(s) 4 and 22 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-3,5-21 and 23-53 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_  
 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

**DETAILED ACTION**

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/21/10 has been entered.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 53 recites the limitation "said second surface" in the last line of the claim.

There is insufficient antecedent basis for this limitation in the claim.

***Claim Objections***

The examiner suggests the applicant amend claims 52 and 53 to have the first overmold correspond with the first side and the second overmold correspond with the second side, as the 2nd and 3rd lines of claim 52 lead the reader to assume the first overmold corresponds to the first side, when in fact in claim 53 the first overmold defines the second side.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 15-19, 30-33, 48, 49 and 51-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fogarty (U.S. Patent No. 6,228,104) and further in view of Pierce (U.S. Patent No. 5,893,878).

Claims 1,19,48,49:

Fogarty teaches an insert for attachment to a jaw-type surgical instrument adapted for grasping or occluding a vessel, said insert comprising an elongate member (80) having opposed proximal and distal ends, a compliant cushion (80) having a tissue-engaging contact surface, said insert further comprising a back surface opposite to said contact surface, and a jaw attachment (86a) member on the back surface, wherein said contact surface and said back surface extend between said opposed proximal and distal ends and face opposite directions.

Fogarty teaches the claimed invention but does not specify hooked elements; however Pierce teaches a jaw-type instrument having a surface with a plurality of molded, hooked traction elements on at least a region of said surface, where the hooked traction elements are configured to have at least two crooks (24 and 80, Fig. 13), wherein said hooked traction elements are of unitary construction with said tissue engaging contact surface. It would have been obvious to one of ordinary skill in the art

at the time the invention was made to have hooked elements as this aids in securely holding tissue.

Claims 15-18 and 30-33:

Since the device of Fogarty teaches all structural limitations as set forth by the independent claims, it is inherent that the device is capable of performing the function required by the claims, that being providing traction forces of either 6-8 pounds or 1.5-2 pounds.

Claim 51:

Fogarty teaches said insert comprises an overmold (Fig. 2A) having first and second sides, said compliant cushion is fixed to said first side and said jaw attachment member is fixed to said second side (Fig. 27A).

Claims 52 and 53:

Fogarty and Pierce teach the claimed invention including using a plastic material (the durometer is not stated, however the claim simply states about 2A to about 90A, therefore using the broadest reasonable interpretation the material of Fogarty and Pierce would have a durometer of *about* 2A to 90A) the integral piece that connects the jaw attachment member to the cushion, except do not teach two separate pieces that connect the jaw attachment member to the cushion. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have two separate pieces connect the jaw attachment member to the cushion, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

Claims 5-7, 23-25 and 42-47, are rejected under 35 U.S.C. 103(a) as being unpatentable over Fogarty (U.S. Patent No. 6,228,104) and Pierce (U.S. Patent No. 5,893,878) as applied to claims 1 and 19 above, and further in view of Bramstedt (U.S. Patent No. 2,706,987) .

Fogarty and Pierce teach the claimed invention, where Pierce teaches an insert (44) for attachment to a jaw-type surgical instrument (Fig. 1) adapted for grasping or occluding a vessel, said insert comprising a compliant cushion (22) having a tissue-engaging contact surface (24) and having a plurality of molded, hooked traction elements on at least a region of said surface (fig. 1), wherein said hooked traction elements are of unitary construction with said tissue engaging contact surface (Fig. 13), but Fogarty and Pierce are silent regarding the height of the traction elements being no more than about .3mm. Bramstedt teaches surgical clamp inserts, wherein the traction elements are .004-.008 inches (Bramstedt, col. 1, II. 35) in order to provide lessened or reduced residual witness marks corresponding to less trauma to the clamped vessel.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Fogarty and Pierce with traction elements no more than .3 mm in height in order to provide lessened or reduced residual witness marks corresponding to less trauma to the clamped vessel.

Claims 8-14, 26-29 and 34-41 rejected under 35 U.S.C. 103(a) as being unpatentable over Pierce, Fogarty and Bramstedt (US 2706987) as applied to claims 5 and 23 above, and further in view of Romanko et al. (US 6484371 ).

Pierce, Fogarty and Bramstedt teach all limitations of preceding dependent claims 5 and 23, and limitations of independent claims 13, 34 and 38 as described with respect to claims 5 and 23, but fails to teach the density of hooked traction elements on the surface is at least 300/cm<sup>2</sup>. Regarding the limitation wherein the density of the hooked traction elements on the surface region is at least 300/cm<sup>2</sup>, Romanko teaches wherein the density of the hooked traction elements may be up to 465 elements per square centimeter or less. It would have been an obvious matter of design choice to provide Pierce, Fogarty and Bramstedt with a traction element density of 300/cm<sup>2</sup>, since applicant has not disclosed that providing such a density provides any advantage over other densities, and providing a density of 300/cm<sup>2</sup> is well known in the art.

#### ***Response to Arguments***

The applicant argues Pierce does not teach the hooks that are lacking in Fogarty, and it would not be obvious to combine Pierce and Fogarty. The examiners position is both Fogarty and Pierce teach tissue manipulation jaws, with the purpose of the surface of jaws being to securely hold the tissue, therefore combining Foragry and Pierce would have been obvious to one of ordinary skill in the art at the time the invention was made, as described in detail above.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELISSA RYCKMAN whose telephone number is (571)272-9969. The examiner can normally be reached on a flexible schedule, email address is melissa.ryckman@uspto.gov.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571)-272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MKR  
/Melissa Ryckman/  
Examiner, Art Unit 3773

/Darwin P. Erezo/  
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